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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/079,184

02/20/2002

Luke R. Magee

8872Q

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27752 7590 05/22/2007  
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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

05/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/079,184

Applicant(s)

MAGEE ET AL.

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23 and 28-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23,28-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claims 23 and 28-31 is withdrawn in view of Hirotsu et al. USPN 4662875.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 23 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirotsu et al. USPN 4662875. Hirotsu discloses a disposable absorbent article capable of being worn about the lower torso of a wearer. The disposable absorbent

article having a first waist region 42 with a first end edge 22, a second waist region 44 with a second end edge 24, and a crotch region 46 interposed therebetween, a longitudinal axis, a transverse axis, and a pair of opposing longitudinal side edges 23, 25 joining the first end edge and the second end edge (Figure 1). The disposable absorbent article comprising a fastening system for releasably securing the first waist region to the second waist region and providing a first fit and a second fit, wherein the first fit is capable of providing a loose fit and the second fit is capable of providing a secure (col. 2, lines 42-68; col. 9, lines 56 through col. 10, lines 15). Hirotsu does not specifically disclose the instructional serviceable indicia comprise graphics of characters wearing the disposable article and illustrating the configuration of the article during the first fit and second fit. However, Hirotsu discloses various embodiments including patterns, symbols, ornamental designs, script, color codings, or other markings as well as combinations of indicia (col. 9, lines 38-47). It would have been an obvious design choice to provide the article with the claimed graphics, since such a modification would have involved a mere change in the size and shape of the indicia, which is taught by Hirotsu. Additionally, "Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. In re Ngai, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004). See also In re Gulack, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983)("Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability .... [T]he critical

question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate."). MPEP 2112.01[R3]III.

As to claim 28, Hirotsu discloses a primary landing member 73, 75 and a secondary landing member 76, 78 wherein the instructional serviceable indicia are disposed on the primary landing member and the secondary landing member (Figure 1).

As to claim 29, Hirotsu discloses at least one externally visible serviceable indicia disposed on portion of the disposable article proximate the longitudinal side edges (Figure 1, elements 73, 75).

5. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirotsu USPN 4662875 in view of Weber WO 99/35401. Hirotsu discloses the present invention substantially as claimed. However, Hirotsu does not disclose the externally visible serviceable indicia disposed on portions of the disposable absorbent article proximate the first and second end edges. Weber discloses an absorbent article comprising at least one externally visible serviceable indicia on the fastening and/or mating components for the benefit of providing a positive interaction to make the toilet training process more enjoyable for the child and caregiver as well as provide educational opportunities (page 4, lines 23-24 and lines 28-33). It would have been obvious to one having ordinary skill in the art to modify Hirotsu to have at least one externally visible serviceable indicia disposed on portions of the disposable absorbent article proximate the first and second end edges for the benefits disclosed in Hirotsu.

As to claim 31, Hirotsu/Weber disclose at least one internally visible serviceable indicia on the body-facing surface of the disposable article (Weber page 4, lines 25-26).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone

Art Unit: 3761

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jacqueline F Stephens  
Primary Examiner  
Art Unit 3761

May 21, 2007